

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RACHEL JANINE BROWN,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

NO: 1:15-CV-36-RMP

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are Plaintiff Rachel Janine Brown's Motion for Summary Judgment, **ECF No. 15**, and Defendant Carolyn W. Colvin's Motion for Summary Judgment, **ECF No. 16**. The Court has reviewed the motions, Ms. Brown's reply memorandum (ECF No. 19), and the administrative record, and is fully informed.

BACKGROUND

Rachel Janine Brown protectively filed applications for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB) on November 29, 2011, alleging disability since November 1, 2010, due to major depression and

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ~ 1

1 back pain. ECF No. 11-5 at 2-14, ECF No. 11-6 at 7, Tr. 165-171, 194. The
2 applications were denied initially and upon reconsideration. ECF No. 11-4 at 2-8,
3 11-15, Tr. 113-119, 122-126. Ms. Brown requested a hearing on June 16, 2012.
4 ECF No. 11-4 at 16-17, Tr. 127-128. Administrative Law Judge (ALJ) Lori L.
5 Freund held a hearing on August 21, 2013, at which Ms. Brown, represented by
6 counsel, and vocational expert, K. Diane Kramer, testified. ECF No. 11-2 at 35-
7 69, Tr. 34-68.

8 The ALJ issued an unfavorable decision on November 1, 2013, finding Ms.
9 Brown was not disabled as defined in the Social Security Act. ECF No. 11-2 at 12-
10 29, Tr. 11-28. The ALJ found that Ms. Brown had not engaged in substantial
11 gainful activity since November 1, 2010, the alleged date of onset. ECF No. 11-2
12 at 14, Tr. 13. Further, the ALJ determined that Ms. Brown had the following severe
13 impairments: history of hernia, generalized anxiety disorder, borderline
14 intellectual functioning, personality disorder, and history of alcohol dependence.
15 *Id.*

16 However, the ALJ found that Ms. Brown did not have an impairment or
17 combination of impairments that met or medically equaled the severity of one of
18 the listed impairments. ECF No. 11-2 at 20-22, Tr. 19-21. The ALJ further found
19 that Ms. Brown had the residual function capacity (RFC) to perform a range of
20 light work with the following limitations:
21

1 the claimant can lift and/or carry 20 pounds occasionally and 10 pounds
2 frequently, stand/walk for about 6 hours in an 8-hour workday and sit
3 for about 6 hours in an 8-hour workday. The claimant is limited to
4 occasional climbing of ladders, ropes and scaffolds; can frequently
5 climb less than a flight of stairs with the use of a handrail; frequent
6 balancing, stooping, kneeling, crouching and crawling; and should
7 avoid all exposure to hazards such as moving machinery and
8 unprotected heights. From a mental health standpoint, the claimant is
9 limited to simple, routine and repetitive tasks; no production rate or
10 pace work (i.e., work performed within one shift could be
11 accomplished, but work performed for a very specific time within a
12 shift would be problematic on a consistent basis); would work best
13 away from the general public; and could have superficial contact with
14 coworkers, however, no tandem tasks could be performed.

15 ECF No. 11-2 at 22, Tr. 21.

16 The ALJ identified Ms. Brown's past relevant work as a sales clerk, a
17 telephone solicitor, a children's attendant, and a cleaner/housekeeper. ECF No. 11-
18 2 at 27, Tr. 26. Given Ms. Brown's age, education, work experience, and RFC, the
19 vocational expert testified that she was not able to perform her past relevant work.
20 *Id.* Next, the ALJ found that, considering Ms. Brown's age, education, work
21 experience and RFC, and based on the testimony of the vocational expert, there
were other jobs that exist in significant numbers in the national economy that Ms.
Brown could perform, including the jobs of office cleaner I, mail clerk, and lab
sample carrier. ECF No. 11-2 at 27-28, Tr. 26-27.

Thus, the ALJ concluded that Ms. Brown was not under a disability within
the meaning of the Social Security Act at any time from November 1, 2010,
through the date of the ALJ's decision. ECF No. 11-2 at 28, Tr. 27.

1 Ms. Brown filed a request for review by the Appeals Council, which was
2 denied on December 10, 2014. ECF No. 11-2 at 2-8, Tr. 1-7. Ms. Brown filed a
3 complaint in the District Court for the Eastern District of Washington on February
4 5, 2015. ECF No. 1, 5. The Commissioner answered the complaint on April 14,
5 2015. ECF No. 10. This matter is therefore properly before the Court pursuant to
6 42 U.S.C. § 405(g). Ms. Brown filed a motion for summary judgment on August
7 24, 2015. ECF No. 15. The Commissioner filed a cross motion for summary
8 judgment on October 5, 2015. ECF No. 16. Ms. Brown filed a reply memorandum
9 on October 30, 2015. ECF No. 19.

10 **STATEMENT OF FACTS**

11 The facts of the case are set forth in the administrative hearing transcript, the
12 ALJ's decision, and the briefs of the parties. They are only briefly summarized
13 here. Ms. Brown was 47 years old at the alleged date of onset, November 1, 2010.
14 ECF No. 11-5 at 2, Tr. 165. She completed the twelfth grade in 1981 and attended
15 some college. ECF No. 11-6 at 8, ECF No. 11-5 at 34-36, Tr. 195, 221-223. Ms.
16 Brown reported she stopped working in February 2011 because she was getting
17 rides to work from her son and his car broke down, and "I was no longer able to
18 make it to work. I was calling in sick a lot." ECF No. 11-6 at 7, Tr. 194.

19 **STANDARD OF REVIEW**

20 Congress has provided a limited scope of judicial review of a
21 Commissioner's final decision. 42 U.S.C. § 405(g). A reviewing court must uphold

1 the Commissioner's decision, determined by an ALJ, when the decision is
2 supported by substantial evidence and not based on legal error. *See Jones v.*
3 *Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). Substantial evidence is more than a
4 mere scintilla, but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d
5 1112, 1119 n.10 (9th Cir. 1975). Substantial evidence "means such relevant
6 evidence as a reasonable mind might accept as adequate to support a conclusion."
7 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal citation omitted).

8 The reviewing court should uphold "such inferences and conclusions as the
9 [Commissioner] may reasonably draw from the evidence." *Mark v. Celebrezze*,
10 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the record as a
11 whole, not just the evidence supporting the Commissioner's decision. *Weetman v.*
12 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989); *see also Green v. Heckler*, 803 F.2d 528,
13 530 (9th Cir. 1986) ("This court must consider the record as a whole, weighing
14 both the evidence that supports and detracts from the [Commissioner's]
15 conclusion."). "[T]he key question is not whether there is substantial evidence that
16 could support a finding of disability, but whether there is substantial evidence to
17 support the Commissioner's actual finding that claimant is not disabled." *Jamerson*
18 *v. Chater*, 112 F.3d 1064, 1067 (9th Cir. 1997).

19 It is the role of the trier of fact, not the reviewing court, to resolve conflicts
20 in evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one
21 rational interpretation, the reviewing court may not substitute its judgment for that

1 of the Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). Thus,
2 if there is substantial evidence to support the administrative findings, or if there is
3 conflicting evidence that will support a finding of either disability or nondisability,
4 the finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226,
5 1229–30 (9th Cir. 1987).

6 SEQUENTIAL PROCESS

7 Under the Social Security Act (the “Act”),

8 an individual shall be considered to be disabled . . . if he is unable to
9 engage in any substantial gainful activity by reason of any medically
10 determinable physical or mental impairment which can be expected to
result in death or which has lasted or can be expected to last for a
continuous period of not less than 12 months.

11 42 U.S.C. § 1382c(a)(3)(A). The Act also provides that a claimant shall be
12 determined to be under a disability only if her impairments are of such severity that
13 the claimant is not only unable to do her previous work but cannot, considering the
14 claimant’s age, education, and work experience, engage in any other substantial
15 gainful work which exists in the national economy. 42 U.S.C. § 1382c(a)(3)(B).
16 “Thus, the definition of disability consists of both medical and vocational
17 components.” *Edlund v. Massanari*, 253 F.3d 1152, 1157 (9th Cir. 2001).

18 The Commissioner has established a five-step sequential evaluation process
19 for determining whether a claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4) and
20 416.920(a)(4). Step one determines if the claimant is engaged in substantial gainful
21

1 activities. If the claimant is engaged in substantial gainful activities, benefits are
2 denied. 20 C.F.R. §§ 404.1520(a)(4)(i) and 416.920(a)(4)(i).

3 If the claimant is not engaged in substantial gainful activities, the ALJ, under
4 step two, determines whether the claimant has a medically severe impairment or
5 combination of impairments. If the claimant does not have a severe impairment or
6 combination of impairments, the disability claim is denied. 20 C.F.R. §§
7 404.1520(a)(4)(ii) and 416.920(a)(4)(ii).

8 If the impairment is severe, the evaluation proceeds to step three, which
9 compares the claimant's impairment to a number of listed impairments
10 acknowledged by the Commissioner to be so severe as to preclude substantial
11 gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii) and 416.920(a)(4)(iii); see also 20
12 C.F.R. §§ 404, Subpt. P, App. 1 and 416, Subpt. I, App. 1. If the impairment meets
13 or equals one of the listed impairments, the claimant is conclusively presumed to
14 be disabled. 20 C.F.R. §§ 404.1520(a)(4)(iii) and 416.920(a)(4)(iii).

15 Before proceeding to step four, the claimant's RFC is assessed. 20 C.F.R. §§
16 404.1545(a)(1) and 416.945(a)(1). An individual's RFC is the ability to do
17 physical and mental work activities on a sustained basis despite limitations from
18 any impairments. 20 C.F.R. §§ 404.1545(a)(1) and 416.945(a)(1).

19 If the impairment is not one conclusively presumed to be disabling, the
20 evaluation proceeds to step four, where the ALJ determines whether the
21 impairment prevents the claimant from performing work she has performed in the

1 past. If the claimant is able to perform her previous work, the claimant is not
2 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv) and 416.920(a)(4)(iv).

3 If the claimant cannot perform her previous work, the final step considers
4 whether the claimant is able to perform other work in the national economy in light
5 of her RFC, age, education, and past work experience. 20 C.F.R. §§
6 404.1520(a)(4)(v) and 416.920(a)(4)(v).

7 At step five, the burden shifts to the Commissioner to show that (1) the
8 claimant can make an adjustment to other work, and (2) specific jobs exist in the
9 national economy which the claimant can perform. *Batson v. Comm'r of Soc. Sec.*
10 *Admin.*, 359 F.3d 1190, 1193-1194 (2004).

11 ISSUES

12 Ms. Brown alleges that the ALJ committed reversible error by (1)
13 improperly finding Ms. Brown less than fully credible, and (2) improperly
14 rejecting the opinion of John Arnold, Ph.D.

15 I. Credibility

16 Ms. Brown contests the ALJ's adverse credibility determination in this case.
17 ECF No. 15 at 11-16.

18 It is generally the province of the ALJ to make credibility determinations,
19 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995), but the ALJ's findings
20 must be supported by specific cogent reasons, *Rashad v. Sullivan*, 903 F.2d 1229,
21 1231 (9th Cir. 1990). Absent affirmative evidence of malingering, the ALJ's

1 reasons for rejecting the claimant's testimony must be "specific, clear and
2 convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v.*
3 *Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General findings are insufficient: rather
4 the ALJ must identify what testimony is not credible and what evidence
5 undermines the claimant's complaints." *Lester*, 81 F.3d at 834.

6 The ALJ found Ms. Brown less than fully credible concerning the intensity,
7 persistence, and limiting effects of her symptoms. ECF No. 11-2 at 23, Tr. 22. The
8 ALJ reasoned that Ms. Brown was not credible because (1) her symptom reporting
9 was contrary to the medical evidence; (2) she over-reported the severity of her
10 symptoms; (3) she was non-compliant with treatment; (4) she quit her job for
11 reasons other than her impairments; and (5) her daily activities were inconsistent
12 with her reported symptoms. ECF No. 11-2 at 23-25, Tr. 22-24.

13 **A. Contrary to the medical evidence**

14 The ALJ's first reason for finding Ms. Brown less than fully credible was
15 that her symptoms were not supported by objective medical evidence. Although it
16 cannot serve as the sole ground for rejecting a claimant's credibility, objective
17 medical evidence is a "relevant factor in determining the severity of the claimant's
18 pain and its disabling effects." *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir.
19 2001).

20 The ALJ found that Ms. Brown's alleged disabling hernia and mental
21 impairments were unsupported by the objective medical evidence, thus

1 undermining her credibility. ECF No. 11-2 at 23-24, Tr. 22-23. In the decision, the
2 ALJ provided multiple citations to the record supporting her finding that Ms.
3 Brown's alleged disabling hernia resulted in, "at most, mild to moderate
4 limitations," but she failed to provide a single statement from Ms. Brown that the
5 cited medical evidence contradicted. ECF No. 11-2 at 23, Tr. 22. As such, the
6 ALJ's determination that Ms. Brown's statements regarding her hernia were
7 inconsistent with objective medical evidence does not meet the specificity standard
8 set forth in *Lester*, and is in error. However, this is a harmless error because, as
9 discussed below, the ALJ provided other clear and convincing reasons to find Ms.
10 Brown less than fully credible that are supported by substantial evidence. *See*
11 *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1163 (9th Cir. 2008)
12 (upholding an adverse credibility finding where the ALJ provided four reasons to
13 discredit the claimant, two of which were invalid); *Batson*, 359 F.3d at 1197
14 (affirming a credibility finding where one of several reasons was unsupported by
15 the record); *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (an error is
16 harmless when "it is clear from the record that the . . . error was inconsequential to
17 the ultimate nondisability determination").

18 As for the ALJ's determination that Ms. Brown's statements regarding her
19 mental impairments were inconsistent with the objective medical evidence, the
20 ALJ set forth multiple allegations made by Ms. Brown and multiple citations to the
21 record showing that these allegations were not supported by the record. ECF No.

1 11-2 at 22-24, Tr. 21-23. For example, the ALJ found that Ms. Brown's statements
2 that she experienced limitations in her ability to remember, complete tasks,
3 concentrate, understand, follow instructions, and get along with others were
4 inconsistent with (1) mental status examinations showing normal mood, affect,
5 memory, and concentration, (2) a report from W. Scott Mabee, Ph.D., showing Ms.
6 Brown was able to understand, remember, and carry out simple verbal written
7 instructions, and (3) a score of 63 out of 90 on formal cognitive testing, which
8 suggested an average cognitive functioning. ECF No. 11-2 at 22, 24, Tr. 21, 23.
9 Therefore, the ALJ provided sufficient specificity under *Lester*, and this portion of
10 her credibility determination is without error.

11 Furthermore, the ALJ determined that the objective evidence showed Ms.
12 Brown's mental impairments, and their resulting symptoms, improved over time.
13 ECF No. 11-2 at 24, Tr. 23. Ms. Brown asserts that her impairments and symptoms
14 did not improve and she continued to suffer from significant mental impairments,
15 citing the evaluation performed by Dr. Arnold and recent records from Deer Park
16 Family Center and Deer Park Urgent Care. ECF No. 15 at 12. However, the ALJ
17 gave Dr. Arnold's opinion little weight and, as discussed below, provided legally
18 sufficient reasons supporting this determination. Additionally the records from
19 Deer Park Family Center and Deer Park Urgent Care focus on Ms. Brown's
20 physical impairments with a few citations to depression and post-traumatic stress
21 disorder, but note that Ms. Brown was doing better with her medication. ECF No.

1 11-7 at 218-253, Tr. 476-511. Therefore, the ALJ's determination is supported by
2 substantial evidence and is without error.

3 **B. Over-reported symptoms**

4 The ALJ found that Ms. Brown had over-reported the severity of her mental
5 health symptoms. ECF No. 11-2 at 24, Tr. 23. The ALJ based this determination on
6 two Minnesota Multi-Phasic Personality Inventories (MMPI) completed by Dr.
7 Mabee and Dr. Arnold. *Id.* Dr. Mabee found Ms. Brown's "profile pattern was
8 deemed invalid. Her F-r and Fp-r scores were elevated beyond the level of
9 interpretation. Her Fs score was severely elevated as well. This suggests, Ms.
10 Brown was over-reporting severe cognitive, somatic and psychological
11 dysfunction." ECF No. 11-7 at 22, Tr. 280. Dr. Arnold found Ms. Brown to be
12 credible, yet her MMPI "profile was judged invalid; however due to over
13 endorsement of psychopathological items." ECF No. 11-7 at 209, Tr. 467.

14 Ms. Brown argues that Dr. Arnold found that (1) she was earnest in her
15 effort to complete the testing, (2) the test scores were reliable, and (3) her
16 "significant personality problems" interfered with her ability to accurately self-
17 report. ECF No. 15 at 13. Dr. Arnold did find that claimant was earnest in her
18 efforts and "[w]hen called upon to be more introspective such as with the MMPI-
19 2RF and similar tests, her personality problems tend to get in the way. Therefore,
20 the following appears to be a generally valid and reliable reflection of client's
21 current psychological functioning, with some tendency toward embellishment."

1 ECF No. 11-7 at 209, Tr. 467. Despite Ms. Brown's argument to the contrary, Dr.
2 Arnold's findings actually support the ALJ's determination that she over-reported
3 psychological symptoms. The Ninth Circuit has upheld the notion that evidence of
4 exaggerating symptoms is a legally sufficient reason to reject a claimant's
5 credibility. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). Therefore,
6 the ALJ's determination that Ms. Brown's tendency to over-report her
7 psychological symptoms is supported by substantial evidence and conforms with
8 established law.

9 **C. Noncompliant with treatment**

10 The ALJ found that Ms. Brown had been noncompliant with medical
11 treatment, thus supporting her determination that her symptoms were not as severe
12 as she alleged. ECF No. 11-2 at 24-25, Tr. 23-24. Noncompliance with medical
13 care or unexplained or inadequately explained reasons for failing to seek medical
14 treatment cast doubt on a claimant's subjective complaints. 20 C.F.R. §§ 404.1530,
15 416.930; *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); *Macri v. Chater*, 93
16 F.3d 540, 544 (9th Cir. 1996) (finding the ALJ's decision to reject the claimant's
17 subjective pain testimony was supported by the fact that claimant was not taking
18 pain medication).

19 Ms. Brown argues that it is a questionable practice for an ALJ to rely on a
20 lack of treatment in her credibility determination when a claimant suffers from a
21 mental health impairment. ECF No. 15 at 13. To support her assertion, Ms. Brown

1 cites *Nguyen v. Chater*, 100 F.3d 1462 (9th Cir. 1996). *Id.* In *Nguyen*, the Ninth
2 Circuit found that the ALJ erred by favoring a non-examining psychologist opinion
3 over an examining psychologist. 100 F.3d at 1464. One of the reasons the ALJ in
4 *Nguyen* offered for rejecting the examining opinion was that no evidence existed of
5 findings or complaints about the existence of a mental disorder prior to the
6 claimant's exam that was conducted in connection with her request for benefits. *Id.*
7 The Ninth Circuit noted that people afflicted with depression often fail to
8 recognize they need help, and thus "the fact that claimant may be one of millions
9 of people who did not seek treatment for a mental disorder until late in the day is
10 not a substantial basis on which to conclude that [an examining physician's]
11 assessment of claimant's condition is inaccurate." *Id.*

12 *Nguyen* is not directly applicable to the case at bar. Here, the ALJ relied
13 upon Ms. Brown's lack of treatment in order to assess whether her assertions that
14 pain and mental health symptoms rendered her disabled were credible.

15 Furthermore, there is a lack of evidence in the record to support Ms. Brown's
16 assertion that her judgement was impaired to the point she was unaware of her
17 need for treatment: "her judgement/problem solving skills are emotional," ECF
18 No. 11-7 at 21, Tr. 279; "Judgement/insight – good," ECF No. 11-7 at 71, 79, 90,
19 102, Tr. 329, 337, 348, 360; and Judgement checked as "Good," ECF No. 11-7 at
20 119, 139, Tr. 377, 397. Therefore, the ALJ's determination is supported by
21 substantial evidence and meets the clear and convincing standard.

1 **D. Stopped working for other reasons**

2 The ALJ found that Ms. Brown leaving her last job as a childcare attendant
3 due to transportation issues and not due to her impairments, “raises a question as to
4 whether her continuing unemployment is actually due to medical impairments.”
5 ECF No. 11-2 at 25, Tr. 24. The Ninth Circuit has held that an ALJ can properly
6 rely on the fact that a claimant left her job due to reasons other than disability, i.e.
7 being laid off, in finding the claimant not entirely credible. *Bruton v. Massanari*,
8 268 F.3d 824, 828 (9th Cir. 2001).

9 When Ms. Brown applied for benefits, she stated that she left her job as a
10 childcare assistant because “I was getting rides to work from my son and his car
11 broke down and I was no longer able to make it to work. I was calling in sick a
12 lot.” ECF No. 11-6 at 7, Tr. 194. At the hearing Ms. Brown testified that she left
13 the job because she was a substitute and was not making herself available
14 “[b]ecause I would get really anxious and upset and I would get really nervous
15 when I went into work and I just didn’t feel like coming in a lot of time.” ECF No.
16 11-2 at 41, Tr. 40.

17 Ms. Brown asserts that the ALJ’s reliance on her statement made upon
18 application was in error, and instead, the ALJ should have relied upon her
19 statement at the hearing. ECF No. 15 at 13. If the evidence is susceptible to more
20 than one rational interpretation, the court may not substitute its judgment for that
21 of the ALJ. *Tackett*, 180 F.3d at 1097. Here, Ms. Brown’s statement at application

1 supports the ALJ's finding and her statement at the hearing supports her assertion.
2 Therefore, the Court will not disturb the ALJ's determination.

3 **E. Activities of Daily Living**

4 The ALJ determined that Ms. Brown's daily activities were inconsistent with
5 her alleged severity of symptoms. ECF No. 11-2 at 25, Tr. 24.

6 A claimant's daily activities may support an adverse credibility finding if (1)
7 the claimant's activities contradict her other testimony, or (2) "the claimant is able
8 to spend a substantial part of [her] day engaged in pursuits involving performance
9 of physical functions that are transferable to a work setting." *Orn v. Astrue*, 495
10 F.3d 625, 639 (9th Cir. 2007) (citing *Fair*, 885 F.2d at 603). "The ALJ must make
11 'specific findings relating to [the daily] activities' and their transferability to
12 conclude that a claimant's daily activities warrant an adverse credibility
13 determination." *Id.* (quoting *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir.
14 2005)). A claimant need not be "utterly incapacitated" to be eligible for benefits.
15 *Fair*, 885 F.2d at 603.

16 In this case, the ALJ determined that Ms. Brown's ability to attend AA
17 meeting four times a week, attend weekly church services, go shopping on a
18 regular basis, do volunteer work, desire to attend college, taking 20 minute walks,
19 and exercising daily at a moderate activity level was inconsistent with Ms.
20 Brown's reports that she suffers from severe mental health symptoms, social
21 isolation, lack of motivation, and the inability to walk for more than 10 minutes.

1 ECF No. 11-2 at 25, Tr. 24. Ms. Brown argues that it is error for the ALJ to
2 consider her home activities in a credibility determination because home activities
3 are different from the pressures of a workplace environment, citing *Garrison v.*
4 *Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014). ECF No. 15 at 14-15. But the activities
5 Ms. Brown described were in excess of typical home activities, and therefore
6 different from those the claimant in *Garrison* had performed. In *Garrison*, the ALJ
7 found talking on the phone, preparing meals, cleaning her room, and helping care
8 for her daughter should not be considered inconsistent with the claimant's alleged
9 disabilities. 759 F.3d at 1016. Here, the ALJ found that Ms. Brown was engaged in
10 social activities, volunteer work, walking for 20 minutes, and exercising daily at a
11 moderate activity level. These statements were directly inconsistent with her
12 reports of social isolation and an inability to walk for more than 10 minutes.
13 Therefore, the ALJ's determination is supported by substantial evidence and in
14 accordance with established law.

15 In conclusion, the ALJ justified her unfavorable credibility determination
16 with clear and convincing reasons supported by substantial evidence and is free of
17 harmful legal error.

18 **II. Medical Opinion of John Arnold, Ph.D.**

19 Ms. Brown argues that the ALJ failed to properly consider and weigh the
20 medical opinion expressed by Dr. Arnold. ECF No. 15 at 16-17.

1 In weighing medical source opinions, the ALJ should distinguish between
2 three different types of physicians: (1) treating physicians, who actually treat the
3 claimant; (2) examining physicians, who examine but do not treat the claimant;
4 and, (3) nonexamining physicians who neither treat nor examine the claimant.
5 *Lester*, 81 F.3d at 830. The ALJ should give more weight to the opinion of a
6 treating physician than to the opinion of an examining physician. *Orn*, 495 F.3d at
7 631. The ALJ should give more weight to the opinion of an examining physician
8 than to the opinion of a nonexamining physician. *Id.*

9 When an examining physician's opinion is not contradicted by another
10 physician, the ALJ may reject the opinion only for "clear and convincing" reasons.
11 *Lester*, 81 F.2d at 830. When an examining physician's opinion is contradicted by
12 another physician, the ALJ is only required to provide "specific and legitimate
13 reasons" for rejecting the opinion. *Id.* at 830-831.

14 The specific and legitimate standard can be met by the ALJ setting out a
15 detailed and thorough summary of the facts and conflicting clinical evidence,
16 stating her interpretation thereof, and making findings. *Magallanes v. Bowen*, 881
17 F.2d 747, 751 (9th Cir. 1989). The ALJ is required to do more than offer her
18 conclusions, she "must set forth [her] interpretations and explain why they, rather
19 than the doctors', are correct." *Embrey v. Bowen*, 849 F.2d 418, 421-422 (9th Cir.
20 1988).

1 Dr. Arnold only saw Ms. Brown once. ECF No. 11-7 at 207-211, Tr. 465-
2 469. Therefore, Dr. Arnold qualifies as an examining physician. The ALJ gave
3 Dr. Arnold's opinion "little weight," because (1) his opinion was inconsistent with
4 his own evaluation, and (2) his opinion was unreliable due to Ms. Brown's invalid
5 MMPI score. ECF No. 11-2 at 26, Tr. 25.

6 The ALJ's first reason for rejecting Dr. Arnold's opinion, that it was
7 inconsistent with his own evaluation, is a legally sufficient reason. *See Bayliss v.*
8 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (finding that an ALJ may cite
9 internal inconsistencies in evaluating a physician's report). The ALJ specifically
10 found that Dr. Arnold's findings that Ms. Brown was alert and oriented, had
11 appropriate attire, had normal hygiene, and was cooperative in answering questions
12 was inconsistent with Dr. Arnold's opinion that she would have moderate to
13 marked limitations in social interactions. ECF No. 11-2 at 26, Tr. 25. Likewise, the
14 ALJ found that Dr. Arnold's findings that Ms. Brown had normal concentration,
15 short-term memory and long-term memory on her mental status examination was
16 inconsistent with his opinion that she would have moderate and marked limitations
17 in sustained concentration and persistence. *Id.*

18 Ms. Brown asserts that "[t]hese brief observations do not negate the findings
19 based on the extensive objective testing Dr. Arnold performed, which formed the
20 basis of his limitations findings," but fails to set forth any evidence in the record,
21 such as the test results, which would support Dr. Arnold's opinion. ECF No. 15 at

1 17. Therefore, the ALJ's determination that Dr. Arnold's opinion was inconsistent
2 with the results of his evaluation is supported by substantial evidence and free of
3 legal error.

4 Ms. Brown fails to challenge the ALJ's second reason for rejecting Dr.
5 Arnold's opinion, that it was unreliable due to her MMPI scores. ECF No. 15. The
6 court ordinarily will not consider matters on appeal that are not specifically and
7 distinctly argued in an appellant's opening brief. *See Carmickle*, 533 F.3d at 1161
8 n.2. The Ninth Circuit explained the necessity for providing specific argument:

9 The art of advocacy is not one of mystery. Our adversarial system
10 relies on the advocates to inform the discussion and raise the issues
11 to the court. Particularly on appeal, we have held firm against
12 considering arguments that are not briefed. But the term "brief" in
13 the appellate context does not mean opaque nor is it an exercise in
14 issue spotting. However much we may importune lawyers to be brief
15 and to get to the point, we have never suggested that they skip the
16 substance of their argument in order to do so. It is no accident that
17 the Federal Rules of Appellate Procedure require the opening brief
18 to contain the "appellant's contentions and the reasons for them, with
19 citations to the authorities and parts of the record on which the
20 appellant relies." Fed. R. App. P. 28(a)(9)(A). We require
21 contentions to be accompanied by reasons.

16 *Independent Towers of Wash. v. Wash.*, 350 F.3d 925, 929 (9th Cir. 2003).

17 Moreover, the Ninth Circuit has repeatedly admonished that the court will not
18 "manufacture arguments for an appellant" and therefore will not consider claims
19 that were not actually argued in appellant's opening brief. *Greenwood v. Fed.*
20 *Aviation Admin.*, 28 F.3d 971, 977 (9th Cir. 1994). Because Ms. Brown failed to
21 provide adequate briefing, the Court declines to consider the remaining issue.

1 The ALJ's determination giving Dr. Arnold's opinion little weight will not
2 be disturbed.

3 **CONCLUSION**

4 Having reviewed the record and the ALJ's findings, the Court finds the
5 ALJ's decision is supported by substantial evidence and free of harmful legal error.
6 Accordingly, **IT IS HEREBY ORDERED:**

7 1. Defendant's Motion for Summary Judgment, **ECF No. 16**, is
8 **GRANTED.**

9 2. Plaintiff's Motion for Summary Judgment, **ECF No. 15**, is **DENIED.**

10 The District Court Clerk is directed to file this Order and provide a copy to
11 counsel for Plaintiff and Defendant. **Judgment shall be entered for Defendant**
12 **and the file shall be CLOSED.**

13 **DATED** this 16th day of March 2016.

14
15 s/ Rosanna Malouf Peterson
16 ROSANNA MALOUF PETERSON
17 United States District Judge
18
19
20
21